

## Employment Alert

Jun-30-2010

### DOL Clarifies Criteria For Utilizing Unpaid Interns

In the current economy, students and young people often are eager to work without pay in exchange for valuable experience. With summer in full swing, many employers draw on this type of free labor by implementing internship programs. Generally speaking, however, under the Fair Labor Standards Act (FLSA) interns are presumed to be "employees" who must be paid for their services unless they work for a non-profit organization or public sector entity. There is one exception to this rule, and the U.S. Department of Labor (DOL) recently issued a fact sheet elaborating on this issue.

Namely, interns at for-profit companies may qualify for a very narrow exclusion from the FLSA's requirements **if** the company provides instruction to the intern, and the intern's work serves his or her own interest. The DOL specifically indicated that the exclusion applies to interns who receive training for their **educational benefit** (i.e., if an intern receives academic credit for the work performed). The DOL has set forth six criteria that for-profit companies should fulfill for their interns to be excluded from the FLSA's minimum wage and overtime requirements:

1. The internship is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The company derives no immediate advantage from the intern's activities and, on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
6. The company and the intern understand that the intern is not entitled to wages for the time spent in the internship.

All six criteria must be satisfied to negate the presumption that interns are employees entitled to wages under the FLSA.

Recently, the DOL has expanded efforts to prosecute companies that fail to pay interns properly, and the Obama administration likewise has indicated it intends to crack down on unpaid internships. Employers should ensure, therefore, that their internship programs are in compliance with the FLSA.

---

For more information, please contact Paul Garry, Erika Dillon, or any other MBT labor and employment lawyer at (312) 474-7900.

*MBT is a leading litigation firm with 90 attorneys and offices in Chicago, Dallas and Phoenix. In addition to concentrating in labor and employment law, our attorneys focus on commercial litigation, insurance coverage, professional liability defense, attorney fee disputes and environmental law.*

For more information, please visit [www.mbtlaw.com](http://www.mbtlaw.com).

---

*MBT provides e-alerts for general information only; this information should not be construed as legal advice. Attorney Advertising.*